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May 21, 2010

## BY ELECTRONIC FILING AND BY FIRST CLASS MAIL

Honorable William J. Martini, U.S.D.J.  
Dr. Martin Luther King, Jr. Federal Building & U.S. Courthouse  
Room 4076  
50 Walnut Street  
Newark, New Jersey 07102

**Re: Mendez v. American General Life Insurance Company**  
**Docket No.: 09-cv-01155**

Dear Judge Martini:

This firm represents defendant American General Life Insurance Company ("American General"). This briefly responds to the May 21, 2010 letter to the Court submitted by plaintiff's counsel, Francis X. Garrity, Esq.

Mr. Garrity states that he has been told that at the May 18 pre-argument conference your Honor raised a new issue involving the Reinstatement Application that has not been briefed. American General respectfully submits that this is incorrect.

The undersigned was at the conference. What happened is that, at one point your Honor asked counsel present for the plaintiff, "What is your argument that the Reinstatement Application was complete on April 20?"<sup>1</sup> Your Honor had noted that Jorge Mendez had not filled out the answers to two questions in the Application. Your Honor also asked what the unanswered questions were, and what answers were given by Mr. Mendez when he completed

<sup>1</sup> The parties agree that the incomplete Reinstatement Application was not actually submitted to American General until April 26, 2007 (Joint Stipulation of Facts, ¶ 22).

Honorable William J. Martini, U.S.M.J.

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the Reinstatement Application and submitted it to American General (on May 7 & 8, 2007, respectively).<sup>2</sup>

All of the facts regarding when the incomplete Reinstatement Application was initially submitted, the dates it later was completed by Mr. Mendez and sent to American General, and the date reinstatement took place, are among those facts that have been stipulated to,<sup>3</sup> and the effects thereof already the subject of the parties' briefs.

American General of course will address whatever issue the Court directs, but sees no need to burden the Court with further briefing on this issue.

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP



Kevin C. Donovan

KCD:sdt

cc: Francis X. Garrity, Esq. (w/encl.) [BY ELECTRONIC MAIL AND BY FIRST CLASS MAIL]

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<sup>2</sup> Joint Stipulation of Facts, ¶ 24.

<sup>3</sup> Joint Stipulation of Facts, ¶¶ 23-27, 40 (copy of all cited paragraphs attached hereto).

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**Attorneys for Plaintiff, Debby Mendez**  
**Our File No. 990.22450/FXG**

DEBBY MENDEZ,	:	UNITED STATES DISTRICT
	:	COURT
Plaintiff,	:	DISTRICT OF NEW JERSEY
	:	
v.	:	Civil Action No.:
	:	09-cv-01155 (WJM)
AMERICAN GENERAL LIFE	:	
INSURANCE COMPANY,	:	<b><u>Joint Stipulation of Facts</u></b>
	:	
Defendant.	:	

Plaintiff, Debby Mendez ("Debby Mendez" and/or "plaintiff")  
and defendant American General Life Insurance Company ("American  
General" and/or "defendant"), by and through their undersigned counsel,  
hereby stipulate that the following facts are undisputed.

1. American General issued Renewable Level Benefit Term Life  
Policy No. YM00399650 (hereinafter the "Policy") insuring the life of Jorge  
Mendez (hereinafter sometimes referred to as "Mendez"), effective  
December 6, 2006.

2. On April 15, 2007, American General contacted Mendez

22. On April 20, 2007, Mendez executed a Reinstatement Application for Life Insurance, which was submitted to American General on April 26, 2007. A true and correct copy of the Reinstatement Application that was forwarded to American General by PGA Financial on April 26, 2007 is included in Exhibit C.

23. On May 2, 2007 American General forwarded a letter to Jorge Mendez acknowledging receipt of his request to reinstate the life insurance contract and advising that it was unable to complete his request until such time as he responded to Question No. 4 on Page 2, Section II-B. Though the parties disagree on whether the entire Reinstatement Application was sent, they agree that a copy of Page 2, Section II-B that included Question No. 4, was attached to the May 2, 2007 letter. Mr. Mendez was instructed to answer Question No. 4 using ink and date the changes. A true copy of the American General May 2, 2007 letter and Page 2, Section II-B of the Reinstatement Application (blank as to Question No. 4 at time of receipt) that included Question No. 4 is attached hereto as Exhibit D.

24. On May 7, 2007 Jorge Mendez completed, dated and initialed his response to Question No. 4, and resubmitted Pages 1 and 2 of the Reinstatement Application, which were forwarded to American General on May 8, 2007 by PGA Financial. A true copy of the Pages 1 and 2 forwarded, along with the PGA Financial cover document, are attached

hereto as Exhibit E.

25. In his response to Question No. 4 on Page 2, Section II-B of the Reinstatement Application, Jorge Mendez wrote:

"2/8/06 physical/no findings

all normal JM 5/7/07"

26. Jorge Mendez was examined by Dr. Lloyd Alterman on February 8, 2006. A true copy of Dr. Alterman's report of February 8, 2006 is attached hereto as Exhibit F.

27. In reliance upon Mendez's answers and each and every statement and representation made by Mendez in the Reinstatement Application as to his health and medical condition which answers were material to the risk, on May 24, 2007 American General reinstated the Policy.

28. On March 18, 2008, American General received a Proof of Death Claimant's Statement from plaintiff, Debby Mendez, who stated that Mendez had died on March 12, 2008 as a result of a brain tumor.

29. American General conducted an investigation regarding the representations made by Jorge Mendez as set forth in the Reinstatement Application.

30. American General learned that on April 24, 2007, Mendez had visited Dr. John Dokko, DO, at Summit Medical Group. The report of Dr.

April 20, 2007, which was submitted to American General via facsimile on April 26, 2007, or after he submitted his response to Question No. 4 on May 7, 2007, which PGA Financial forwarded to American General on May 8, 2007.

40. Based upon the answers submitted by Mendez in the Reinstatement Application, American General reinstated the Policy on May 24, 2007.

41. If American General had known of the change in the health of Jorge Mendez, it would not have reinstated the Policy.

The foregoing facts are stipulated by the parties to be true.

<p>Garrity, Graham, Murphy, Garofalo &amp; Flinn  72 Eagle Rock Avenue  Suite 350  P.O. Box 438  East Hanover, NJ 07936  (973) 509-7500</p> <p>By: <u><i>Francis X. Garrity</i></u>  Francis X. Garrity</p> <p>Dated: <u>March 2, 2010</u></p>	<p>WILSON, ELSE, MOSKOWITZ, EDELMAN &amp; DICKER LLP  33 Washington Street  Newark, New Jersey 07102-5003  Tel: (973) 624-0800</p> <p>By: <u><i>Kevin C. Donovan</i></u>  Kevin C. Donovan</p> <p>Dated: <u>March 2, 2010</u></p>
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